IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

LETTERS PATENT APPEAL NO.55 OF 2007
WITH
LETTERS PATENT APPEAL NO.56 OF 2007

Shivaji Krishna Aswar. ...Appellant.
Vs.
Dattatraya Maruti Ghumatkar
and ors. ...Respondents.

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L.P.A. No.56 of 2007

Shivaji Krishna Aswar. ...Appellant.
Vs.
Gram Vikas Mandal and ors. ...Respondents.

Mr.M.L. Patil for the Appellant.

CORAM: S.B. MHASE &
R.S. MOHITE, JJ.
DATE : 21st March, 2007

P.C.

1. Heard.

2. In the present matters, the dispute is in respect of the appointment of the Head Masters by following seniority list and the rules of reservations applicable to the promotion. This aspect has been considered by the rules under Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and 24% reservation has been provided for. This aspect has been considered by the full bench in the matter of **New English High School Association, Nagpur and another Vs. Baldev ADE**

and another reported in 2006(6) Mah.L.J. Page 882. The learned counsel appearing for the appellant submitted that the full bench has not considered the provisions of the Act namely Maharashtra State Public Services (Reservations for Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001. The learned counsel invited our attention to the definition of Public Services and posts and submitted that the respondent Educational Institution is covered under this definition and therefore, the said Act is applicable. It is to be noted that the respondent is a private Educational Institution registered under the Bombay Public Trust Act and having schools. It gets grant from the Government. The relevant portion of the definition of public services and posts which is pointed out to us is as follows:

. "Public Services and posts" means the services and posts in connection with the affairs of the State and includes services and posts in.....

> iv) an educational institution owned and controlled by the Government, which receives grant-in-aid from the Government including a university established by or under a Maharashtra

Act.

vi) respect of which reservation was applicable by Government orders on the date of commencement of this Act and which are not covered under sub-clauses (i) to (v).

3. If we consider this definition, this definition contemplates services and posts in connection with the affairs of the State and then it has further provided by providing clauses (i) to (vi). Considering this definition, we cannot forget that the posts of the reservation of the services must be in affairs of the State and this aspect has been elucidated from the various clauses for the sake of clarity. If we consider clause (iv) of the said definition, it speaks educational institution owned and controlled by the Government. Now the respondent No.1 Public Trust is not an educational institution owned and controlled by the Government though it gets grant-in-aid. Therefore, the educational institution contemplated under Clause (iv) is the educational institution which has been established and controlled by the Government for which the Government is giving grant for running the institution like university or any other educational institution established by the Government and therefore,

we are of the opinion that the present respondent No.1 is not covered by the said clause.

4. The learned counsel then invited our attention to clause (vi) which speaks about the services and the posts in respect of which the reservation was applicable by the Government orders from the date of commencement of this Act and which are not covered by sub-clauses (i) to (v). The learned counsel has tried to read the clauses in isolation of the main clause and such desecrated reading of the definition is not approved by us but we find that this definition contemplates services and the posts in connection with the affairs of the State which includes services and posts from the date of the commencement of the Act and which are not covered under clause (i) to (v). Thus, if we read the definition in proper perspective, we get an analysis that the respondent No.1 is not covered under public services and posts. In the result, we find that the said Act of 2001 is not applicable to the respondent No.1. Except this, no other point is argued by the learned counsel. Hence, both the appeals are rejected summarily.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**